

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANDREW DEAN AND AARON HOROWITZ,

Plaintiffs,

-vs-

Civil No. 02-CV-6029S(B)

CITY OF BUFFALO, BUFFALO POLICE
DEPARTMENT, EARL PERRIN, LT. TIM
DOWNS, LT. STEVEN MALKOWSKI, OFF.
ERIN MCCARTHY, OFF. RAY HARRINGTON,
JOHN DOE AND ROBERT ROE
POLICE OFFICERS OF THE CITY OF BUFFALO,
THE IDENTITY AND NUMBER OF WHOM ARE
PRESENTLY UNKNOWN TO PLAINTIFFS AND
HART HOTELS, INC., SHAMROCK SECURITY,
INC. AND WPH MIDTOWN ASSOCIATES,

**AMENDED
NOTICE OF MOTION**

Defendants.

NOTICE OF DEFENDANT'S MOTION FOR A PROTECTIVE ORDER PURSUANT TO
FRCP 26(b)(1)&(2);FRCP 26(c)(1)&(4); AND FRCP 30(d)

PLEASE TAKE NOTICE that defendant, Earl Perrin ("Defendant"), by and through his attorneys, Goldberg Segalla LLP, moves for a protective order under F.R.C.P. 26(b)(1) and (2), F.R.C.P. 26(c)(1) and (4), and F.R.C.P. 30(d) to enjoin prohibit, or in the alternative limit, the ability of Plaintiffs' counsel and/or counsel for any other party in this matter to depose Earl Perrin as to any prior civilian complaints or any alleged incidents of violence or impropriety relating to his employment as a police officer with the City of Buffalo Police Department ("BPD") and Shamrock Security, Inc. ("Shamrock") as a guard, on the following grounds:

1. Such questioning will necessarily relate to matters that theoretically could subject the deponent to criminal liability and deponent will exercise his 5th Amendment rights regarding same
2. Such questioning will encroach on matters that are protected by public policy, specifically New York law and state administrative policy of encouraging frank internal review and preventing the disclosure of such review

3. Such questioning cannot lead to the discovery of admissible evidence, and therefore is improper under the Federal Rules of Evidence.

WHEREFORE, Defendants, Earl Perrin and Shamrock Security, Inc. pray that this Court grant an Order:

- A. Enjoining and prohibiting Plaintiffs' counsel and/or counsel for any other party in this matter from questioning Earl Perrin at his deposition about any complaints or "past instances of alleged use of excessive force", including any civilian complaints made or filed against him or any other alleged incidents involving the use of excessive force, violence or impropriety during his course of employment with the BPD and/or Shamrock at his deposition
- B. In the alternative, enjoining and prohibiting Plaintiffs' counsel and/or counsel for any other party in this matter from questioning Earl Perrin at his deposition about any alleged complaints made or filed against him or any other alleged incidents involving the use of excessive force, violence or impropriety during his course of employment with the BPD;
- C. In the alternative, enjoining and prohibiting Plaintiffs' counsel and/or counsel for any other party in this matter from questioning Earl Perrin at his deposition about the events related to the arrest, detention and/or death of Stanley Washington;
- D. In the alternative, enjoining and prohibiting Plaintiffs' counsel and/or counsel for any other party in this matter from questioning Earl Perrin at his deposition about any complaints made or filed against him or alleged incidents involving the use of excessive force, violence or impropriety that may have allegedly occurred during his employment with Shamrock;
- E. In the alternative, enjoining and requiring Plaintiffs' counsel to reveal the source and content of any civilian complaint made or filed against Earl Perrin and/or the source of his knowledge of any other alleged incidents of violence or impropriety involving Earl Perrin relating to his employment as a police officer with the BPD, and subsequently allowing Defense counsel an opportunity for further legal comment on this matter; and
- F. Awarding such other and further relief as may be just and equitable.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 7.1 (c) and the June 4, 2004 Scheduling Order of this Court, since responding papers are due July 2, 2004, Defendant Earl Perrin intends to file and serve reply papers no later than three business days prior to the July 15, 2004 return date of this motion.

DATED: Buffalo, New York
June 7, 2004

GOLDBERG SEGALLA LLP

By: /s/ Louis B. Dingeldej Jr.
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Louis B. Dingeldej Jr., Esq.
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CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Amended Notice of Motion for Protective Order** was served on the following counsel of record by deposit in the United States mail, first class postage prepaid, this 7th day of June, 2004.

Steven M. Cohen, Esq.
Lorenzo and Cohen
Attorneys for Plaintiff
1400 Statler Towers
Buffalo, New York 14202

Craig D. Hannah, Esq.
Attorney for Defendant City of Buffalo
65 Niagara Square
Room 1100
Buffalo, New York 14202

I further certify that on May 24, 2004 I electronically filed the foregoing **Notice of Motion for Protective Order** with the Clerk of the Western District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participant on this case:

Robert M. Lippman, Esq.
Attorney for Defendant Hart Hotels
800 Olympic Towers
300 Pearl Street
Buffalo, New York 14202

Dated: Buffalo, New York
June 7, 2004

/s/ Louis B. Dingeldey Jr.
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